

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 Keith Martinez,

Case No.: 2:18-cv-002393-JAD-CWH

4 Plaintiff

Remand Order

5 v.

[ECF Nos. 7, 11, 13]

6 Royal Links Golf Club,

7 Defendant

8 Plaintiff Keith Martinez filed this civil action for violations of the Fair and Accurate
9 Credit Transactions Act (FACTA) and NRS Chapter 598 in Nevada's Eighth Judicial District
10 Court.¹ Defendant Royal Links Golf Club removed the case to federal court based on the federal
11 question presented by the FACTA claim² and then promptly moved to dismiss that FACTA
12 claim based on the plaintiff's lack of Article III standing.³ Plaintiff does not take a position on
13 whether Article III standing exists,⁴ and defendant argues that "Plaintiff has failed to state a
14 claim that would establish Article III standing" because his "alleged injury is entirely
15 speculative."⁵ The burden to establish removal jurisdiction is on the defendant, as the removing
16 party here.⁶ Because the defendant has not met that burden⁷ but instead argued that this court

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18 ¹ ECF No. 1 at 9 (complaint).

19 ² ECF No. 1 at 2.

20 ³ ECF No. 7.

21 ⁴ See ECF No. 11 at 7, n.3.

22 ⁵ ECF No. 7 at 5.

23 ⁶ See *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992) ("The 'strong presumption' against removal jurisdiction means that the defendant always has the burden of establishing that removal is proper.).

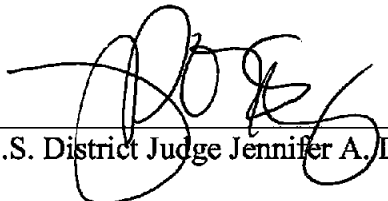
⁷ See, e.g., *Barnes v. ARYZTA, LLC*, 288 F. Supp. 3d 834, 839 (N.D. Ill. 2017), appeal dismissed, 2018 WL 3583218 (7th Cir. Feb. 8, 2018); *Katz v. Six Flags Great Adventure, LLC*, 2018 WL 3831337, at *7 (D.N.J. Aug. 13, 2018) (remanding removed FACTA case based on lack of

1 lacks the power to hear this case because of a lack of Article III standing, it appears that this
2 court lacks subject-matter jurisdiction,⁸ and I remand this case under 28 U.S.C. § 1447(c).⁹ So, I
3 deny the motion to dismiss and instead grant the plaintiff's countermotion to remand. But
4 because the plaintiff did not comply with Local Rule 54-1 in requesting attorney fees, I deny its
5 motion for fees.¹⁰

6 For these reasons and those stated on the record at today's hearing, IT IS HEREBY
7 ORDERED that

- 8 • Plaintiff's motion to remand [ECF No. 11] is **GRANTED**;
- 9 • Defendant's motion to dismiss [ECF No. 7] and plaintiff's motion for attorney fees [ECF
10 No. 13] are **DENIED**; and
- 11 • The Clerk of Court is directed to **REMAND this case back to the Eighth Judicial**
12 **District Court for Clark County, Nevada, Case No. A-18-781628-C** and **CLOSE THIS**
13 **CASE.**

14 Dated: February 25, 2019

15 
16 U.S. District Judge Jennifer A. Dorsey

17 _____
18 Article III standing); *see also Polo v. Innoventions Int'l, LLC*, 833 F.3d 1193, 1196 (9th Cir. 2016).

19 ⁸ In so holding, I do not determine whether plaintiff can establish that he suffered an injury in
20 fact; I merely hold that the defendant has failed to meet its burden to show that federal
jurisdiction exists. And because I cannot find that I have jurisdiction, I do not reach the
defendants' remaining dismissal arguments.

21 ⁹ *Reyes v. Checksmart Fin., LLC*, 701 F. App'x 655, 659 (9th Cir. 2017) (citing *Polo*, 833 F.3d at
22 1196, and 28 U.S.C. §1447(c) and noting, "When a plaintiff lacks Article III standing for an
entire removed case, the district court must remand the entire case, not dismiss it.").

23 ¹⁰ *See* L.R. 54-14(d) (providing that the failure to supply an attorney affidavit, an itemization and
description of the work performed, and other information in support of motion for attorney's fees
"may be deemed a consent to the denial of the motion").